

## CR1005 Driving Under the Influence of Alcohol, Drugs, or Combination.

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Driving Under the Influence of [Alcohol][Any Drug][the Combined Influence of Alcohol and Any Drug] [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME) ~~intentionally, knowingly, or recklessly~~
  - a. operated a vehicle; or
  - b. was in actual physical control of a vehicle; and
2. (DEFENDANT'S NAME):
  - a. [had sufficient alcohol in [his][her] body that a subsequent chemical test showed that [he][she] had a blood or breath alcohol concentration of [.05][.08] grams or greater at the time of the test;]
  - b. [was under the influence of [alcohol][any drug][the combined influence of alcohol and any drug] to a degree that rendered [him][her] incapable of safely operating a vehicle; or]
  - c. [had a blood or breath alcohol concentration of [.05][.08] grams or greater at the time of operation or actual physical control][.]; and]
3. (DEFENDANT'S NAME) operated the vehicle in a negligent manner which was the proximate cause of serious bodily injury upon [VICTIM'S NAME].
4. [The defense of \_\_\_\_\_ does not apply.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

### References

Utah Code § 41-6a-502

Utah Code § 76-2-101(2)

*State v. Bird*, 2015 UT 7

[\*State v. Higley\*, 2020 UT App 45](#)

*State v. Thompson*, 2017 UT App 183

*State v. Vialpando*, 2004 UT App 95

### Committee Notes

This instruction is intended to be used in prosecuting Third Degree Felony driving under the influence. For Class B Misdemeanor or Class A Misdemeanor driving under the influence instructions, use CR1003 or CR1004, respectively. An alternative method to instruct the jury would be to use CR1003 (MB Instruction) in combination with SVF1001 ("Driving Under the Influence Offenses"). For Third Degree Felony driving under the influence offenses that result from a prior conviction or convictions, practitioners should request that the court address the prior convictions in a bifurcated proceeding and, if appropriate, use SVF1002 ("Driving Under the Influence – Prior Conviction").

In the realm of DUI, courts often give instructions at the request of the parties that comment on the sufficiency, or relative quality, of evidence. These instructions are disfavored and may run afoul of the Utah Supreme Court's admonition that trial courts should not comment upon the evidence. See *State v. Pappacostas*, 407 P.2d 576 (Utah 1965); Utah R. Crim. P. 19(f); and CR1001 "Preamble to Driving Under the Influence Instructions."

~~It is an open question whether a mens rea is required with respect to the operation or actual physical control element of DUI. As of July 1, 2020, Utah Code was amended to explicitly state that driving under the influence is a strict liability offense (see HB0139-2020, line 164). For any offense committed prior to July 1, 2020, there is divergent legal authority on whether driving under the influence is a strict liability offense with respect to the~~

operation or actual physical control of the vehicle. See Utah Code § 76-2-101(2) (no mental state generally required for traffic offenses), *State v. Higley*, 2020 UT App 45, and *State v. Thompson*, 2017 UT App 183; *but see State v. Vialpando*, 2004 UT App 95, ¶ 26.

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